



October 31, 2011

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Madame Secretary:

On behalf of the State of Connecticut, we offer the following comment on proposed rules pertaining to the Establishment of Exchanges and Qualified Health Plans (QHPs), which were published in the Federal Register on July 15, 2011 in accordance with Title I of the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010.

We have several suggestions on ways in which we believe the regulations can be improved to help ensure that onerous and unnecessary burdens are not placed on states as we establish and operate Health Insurance Exchanges. We believe that flexibility is crucial to the successful implementation of the ACA and the establishment of Exchanges.

In many respects the proposed regulations are overly-prescriptive, and we urge you to revisit many of the requirements in these proposed rules to provide flexibility to states. Rather than specify the operational details in rule, we suggest that HHS provide general standards or templates that may be utilized by the Exchanges.

We appreciate the opportunity to offer these comments.

The navigator requirements (section 155.210) would require the state to fund navigators' activities prior to the Exchange becoming fully operational. While we agree that a comprehensive and multi-pronged outreach, education and enrollment program will be necessary to enroll people in coverage and attract a broad and diverse risk pool, we are concerned about the apparent requirement to fund the navigator program with state funds.

With regard to the enrollment process (section 155.410), we suggest that enrollments completed and received by the 22nd of the month preceding the effective date of coverage may not provide the Exchange and the QHP issuers with sufficient time to process enrollments in time for an effective date of coverage of the first date of the following month. This may be particularly problematic in late 2013 leading up to the January 1, 2014 effective date of coverage, when thousands of people may sign up for coverage.

You requested comments as to whether the federal regulations should prescribe standards for effective dates of coverage, required dates of notices, dates of open enrollments for plan years after 2014, and managing transfers of members following plan mergers. We suggest that final regulations should defer to state Exchanges on these and other operational details, providing more general guidelines instead of prescribing specifics.

With regard to your request for comment regarding employer and employee participation requirements, we believe that state Exchanges should determine whether, and how, to set participation and/or contribution requirements. Providing flexibility to Exchanges is critical to address state-specific circumstances, particularly in the small group markets.

The requirement at 155.705(b)(4) that state Exchanges collect all SHOP premiums may have unintended consequences. In the event that an employer selects a single QHP as permitted under 155.705(b)(2), the Exchange should allow the issuer to bill the employer directly. We suggest that the regulations should provide state Exchanges with the flexibility to determine whether employers may choose to be billed directly by the issuer or have the premiums collected by the SHOP Exchange and then remitted to the issuers.

With respect to the notices that may be required under 155.715(g), we are concerned that these may duplicate COBRA and mini-COBRA notices, and that the differences in these notices may ultimately prove confusing to recipients. For this reason, we urge you to adopt a COBRA notice specific to employers in the SHOP Exchange; states may adopt the same text for their mini-COBRA notice requirements, and the Exchanges may elect to use this or a related text for its notice. In this way, we may be able to reduce the disparate types of notices that an employee receives.

With regard to disenrollment notification requirements at 155.720(h), we suggest that the regulations allow state Exchanges to require all disenrollment requests from current employees to be submitted directly to the participating employers. In this way, the Exchange can ensure that the employer receives notification and that the employer is able to communicate to the employee the potential consequences of disenrollment.

Regarding the proposed open enrollment dates at 155.725(e), we suggest that the regulations allow state SHOP Exchanges to determine the open enrollment dates.

With regard to the application data requirements described in 155.730(b), we suggest that state Exchanges retain the ability to request additional data fields and identifying information that may make it easier to link the employer (and the employees) to other data sources in the state. Regarding the broad prohibition on the SHOP Exchange requesting additional information from the applicant that may go above-and-beyond the information needed to complete an employee application, we suggest that the rules not impose limitations on the information that the SHOP Exchange may request of employees.

We request clarification regarding the federal interpretation of the certification standards for QHPs described at 76 FR 41891 and in the proposed rules at 155.1000(a) and 155.1010(b). The preamble comments indicate that multi-state plans must meet “all requirements for QHPs” but subsequently states that multi-state plans are “deemed” as meeting the Exchanges’ certification requirements. We assume that this means that if an Exchange adopts certification standards that go beyond the minimum criteria proposed in the federal rules, then multi-state plans would not need to comply with such standards. We oppose a federal interpretation that would potentially exempt multi-state plans from certification standards adopted by a state Exchange.

We request clarification as to whether multi-state plans must satisfy any and all requirements that apply to state-certified QHPs. Exempting multi-state plans from the Exchange's certification standards may undermine the ability of state Exchanges to promote market competition and establish a level playing field.

We support the flexibility granted to state Exchanges in the proposed rule at 155.1050 regarding provider network adequacy standards. Standards should be determined at the state level and not set nationally. In response to the questions posed, we believe that any further federal regulatory action or guidance with regard to network adequacy should be limited.

We are concerned with regard to the 90-day premium grace period and related procedures (156.270). QHP issuers will have to account for their estimate of delinquent or foregone premiums from such enrollees during these grace periods by increasing the base premium rates for all enrollees. Individuals that receive advance premium tax credits will not be affected by these increases, but those that are ineligible for premium subsidies will have to pay higher premiums either in the Exchange or in the non-Exchange market if they purchase QHPs from issuers that also sell on the Exchange. We believe that the impact of delinquent or foregone enrollee premiums should be minimized by allowing QHP issuers to limit enrollees use of non-emergent services during the period in which payment is delinquent.

We are also unclear as to how to interpret a clause in 156.270(f). The provision allows QHPs to terminate coverage for an enrollee if the enrollee "...exhausts the grace period...without submitting any premium payment...." State Exchanges and QHPs should have the right to insist on full payment of delinquent enrollee premiums before continuing coverage.

We are unclear on how to interpret the preamble comment that "QHP issuers must apply non-payment of premium policies, irrespective of Exchange standards, uniformly to all enrollees in similar circumstances." Does this mean that QHP issuers must apply the same non-payment policies to enrollees who do not receive advance premium tax credits? Likewise, must QHPs in the parallel market (outside of the Exchange) apply these non-payment policies to their enrollees? We request clarification.

We appreciate the opportunity to comment on these proposed regulations and look forward to working with you on the implementation of a Health Insurance Exchange that works for the residents and businesses of Connecticut.

Sincerely,

A handwritten signature in black ink, appearing to read "Nancy Wyman". The signature is fluid and cursive, with the first name "Nancy" written in a larger, more prominent script than the last name "Wyman".

Nancy Wyman
Lieutenant Governor
State of Connecticut

